

REMARKS

Reconsideration of the application is respectfully requested, in view of the following remarks.

Phytosterols, including phytostanols, are well known cholesterol lowering agents. Modification of phytosterols to their ester form is known to improve solubility in the fat phase of food products such as water in oil emulsions in the form of spreads. The specification points out, however, that certain emulsions with phytosterols show differences in physical properties compared to traditional emulsions without added sterol fatty acid esters. In particular, the specification discloses that one of the drawbacks of addition of sterol fatty acid esters is the size reducing effect on the droplet size of the dispersed aqueous phase, which is believed to contribute to a deterioration in mouth feel. The specification indicates that deterioration in the break up of the emulsion is believed to block release of flavors of the dispersed phase.

The Summary of the Invention indicates that it has now been found that addition of folic acid to a water in oil emulsion comprising sterol fatty acid esters is effective in influencing the mouth feel of the emulsion. As pointed out on page 5, applicants believe that the change in mouth feel is influenced by the effect of folic acid on the droplet size of the dispersed aqueous phase.

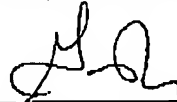
The Office argues that mouth feel is an inherent property of the composition produced when the combination of the rejection is used. It is submitted that inherency relates to novelty rather than unobviousness. The Office points to no authority for the proposition that it can ignore a proposed unobvious advantage of the invention by asserting that it would be an inherent property of the composition produced by the combination of references put together by the Office in support of its rejection. Indeed, presumably it

would always be possible for the Office to argue that a property would be inherent in its proposed combination of references. This would appear to eliminate unobvious advantages as a criteria for patentability. It is submitted that the issue is not whether the property would be inherent in the combination of references put forth by the Office but whether it is unexpected in view of the teachings of those references.

The Office asserts that the fact that one composition may have a different mouthfeel from another does not constitute unobviousness. The Office points to no authority for the proposition that mouthfeel is not an appropriate unexpected property or unobvious advantage.

In view of the foregoing, it is respectfully requested that the application be allowed.

Respectfully submitted,



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